IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21/01/2004

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THE HONOURABLE MR.JUSTICE P.D.DINAKARAN

W.P.No.7844 of 1999 and W.P.No. 7845 of 1999

K.Dhanasekaran .. Petitioner
in WP:7844/99

K.Krishnamoorthy .. Petitioner
in WP:7845/99

-Vs-

1. Bobba Aviation Services (P) Ltd.
General Sales Agent
Lufthansa Cargo Airlines
II Floor, 281, Mount Road
Teynampet, Chennai-18.

2. Airport Authority of India
International Airports Division
Air Cargo Complex
Madras International Airport
Madras-27.

3. Lufthansa Cargo India
Room No.12, Old Meenambakkam Airport
Madras-27.

4. Union of India
rep. by the Secretary,
Ministry of Labour
Shram Sakthi Bhavan
Rafi Marg, New Delhi-110 001.

5. Regional Labour Commissioner (Central)
26, Haddows Road
5th Floor, Sasthri Bhavan
Madras-6.

6. Government of Tamil Nadu
rep. by its Secretary
Labour and Employment Department
Fort St.George, Madras-9.

7. Labour Officer Circle-III .. Respondents
Kuralagam, Madras-108. in both W.Ps.

PRAYERS: Petitions under Article 226 of the Constitution of India praying to issue a writ of Mandamus as stated within.

For Petitioners : Mr.Gowardhan

For Respondents : Mr.A.J.Jawad for R2
Mr.K.Mahendran
Spl. Govt Pleader for R6

:ORDER

Heard.

2. The petitioners, who were temporary employees in the first respondent/Management, raised an industrial dispute against the first respondent, with regard to their non-employment from 15.12.1997. The fifth respondent, by proceedings even dated 5.8.1998 under Section 12(4) of the Industrial Disputes Act (for brevity "the Act"), of course, after calling for the remarks of the Management and considering their comments, submitted a failure report and the same was forwarded to the fourth respondent, who by independent proceedings even dated 17.2.19 99 refused to refer the matter for adjudication holding that (i) the petitioners have been reportedly retrenched from service as the Management had no work to offer them; (ii) there was no violation of the provisions of the Act; and (iii) the Management was willing to give compensation. Hence, the petitioners have preferred these writ petitions for issue of a writ of Mandamus to direct the Government to refer the dispute relating to their non-employment with effect from 15.12.1 997 to the Industrial Tribunal, Chennai for adjudication.

3. It is no doubt true that before passing a failure report under Section 12(4) of the Act, the fifth respondent sought for comments of the first respondent/Management and also considered the same. But, however, the fourth respondent acting on the basis of the failure report submitted by the fifth respondent came to the conclusion that (i) the petitioners have been reportedly retrenched from service as the Management had no work to offer them; (ii) there was no violation of the provisions of the Act; and (iii) the Management was willing to give compensation, merely on the ground that the first respondent/ Management was willing to give compensation.

4. It is trite law that it is not open to refuse to refer the matter for adjudication by eschewing the powers of the authorities conferred under the Act for such adjudication, vide CHERAN TRANSPORT EMPLOYEES UNION VS. GOVERNMENT OF TAMIL NADU reported in 1999 (3) LLN 293.

5. A cursory reading of the proceedings even dated 17.2.1999 makes it clear that the said proceedings were passed by the fourth respondent without going into the merits of the disputes, which in my considered opinion, is

impermissible in law. Therefore, satisfied that the refusal to refer the dispute for adjudication to the Government is per se illegal, I hereby direct the fourth respondent to refer the matter for adjudication within sixty days from the date of receipt of copy of this order in order to avoid any further delay in rendering justice.

These writ petitions are ordered accordingly. No costs.

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To:

1. Airport Authority of India
International Airports Division
Air Cargo Complex
Madras International Airport
Madras-27.

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